



**TOWN OF COLMA
MUNICIPAL CODE**

CHAPTER FIVE: PLANNING, ZONING, USE, DEVELOPMENT OF LAND AND IMPROVEMENTS

Subchapter Three: Use Permits, Non-Conforming Building and Uses, Variances

5.03.400 Application for Use Permit.

(a) An application for a Use Permit shall be made on the Town of Colma Project Application and shall contain such information as is necessary to complete the Project Application. In addition, the application shall contain sufficient information to enable the City Council to determine whether the standards for granting a Use Permit are met.

(b) The application shall be reviewed by the City Planner for completeness in accordance with section 5.01.040 of this Code.

(c) Within ten days after the City Planner has determined that the application is complete, he shall transmit the same to the City Council with his recommendations. This time limitation is directory, not mandatory.

(d) A public hearing shall be held by the City Council prior to taking any action to grant or deny any Use Permit. The public hearing shall be conducted in accordance with the provisions of section 1.02.120 of this Code. Whenever possible, the public hearing required by this section

shall be held at the same time as, and in conjunction with, the public hearing, if any, on the final EIR for the project for which the Use Permit or Variance is requested.

(e) An application for a Use Permit shall be accompanied by a fee, which shall be established from time to time by the City Council of the Town of Colma by resolution.

[History: formerly § 5.340; ORD. 234, 3/14/79; ORD 443, 9/9/92; ORD. 524, 1/14/98;
ORD. 638, 12/14/05]

5.03.410 Standards for Granting Use Permit.

- (a) A Use Permit may be granted by the City Council only if:
- (1) The specific proposed use will be consistent with the provisions of the General Plan and this subchapter;
 - (2) The granting of the Use Permit will not be detrimental to the public health, safety or public welfare, or materially injurious to properties or improvements in the vicinity;
 - (3) Existing property uses, large or small, will not be detrimentally affected by the proposed use;
 - (4) The granting of the Use Permit will not constitute a grant of special privilege inconsistent with the limitations imposed by this subchapter on the existing use of properties, large or small, within the Town of Colma;
 - (5) The City Council is satisfied that the proposed structure or building conforms to the purposes and intent of the General Plan and this subchapter; and
 - (6) The use will not constitute a nuisance as to neighboring persons or properties.
- (b) In granting a Use Permit, the City Council may impose such conditions as are deemed necessary and desirable to protect the public health, safety and welfare in accordance with the purposes and intent of the General Plan and this subchapter, provided that no Use Permit may be conditioned upon:
- (1) The dedication of land for any purpose not reasonably related to the use of property for which the Use Permit is requested; or
 - (2) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which the Use Permit is requested.

[History: formerly § 5.341; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.420 Effective Dates of Use Permit; Reconsideration.

(a) The decision to grant or deny the application for a Use Permit shall become effective upon expiration of ten (10) days following action of the City Council, unless a written request for reconsideration along with a fee, which shall be established from time to time by the City Council of the Town of Colma by resolution, shall have been filed with the City Clerk in accordance with section 1.02.130 of this Code within the ten (10) day period by any person affected by said decision.

(b) A Use Permit shall lapse and become null and void one (1) year following the date on which the Use Permit became effective unless, prior to the expiration of one (1) year, a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the Use Permit application, or unless the Use Permit is renewed. The City Council shall determine whether or not construction has been commenced and diligently pursued as above required. A Use Permit may be renewed for an additional period of one (1) year from the date when the Use Permit originally became effective. An application for renewal of Use Permit is filed with the City Council setting forth good and sufficient reasons for the renewal. A public hearing on the application is not required. The City Council may grant or deny an application for renewal of Use Permit, with or without conditions.

(c) The Use Permit, and all conditions attached thereto, shall run with the land unless:

(1) There is a change in the law on ordinances authorizing such use;

(2) The Use Permit has lapsed in accordance with subsection (b) above or has been revoked in accordance with section 5.03.430 below.

[History: formerly § 5.342, ORD. 234, 3/14/79; ORD. 524, 1/14/98; ORD. 638, 12/14/05]

5.03.430 Revocation of Use Permit.

A Use Permit may be revoked upon failure to comply with the provisions therefore. Revocation proceedings shall be initiated upon demand by the City Council. Written notice of the revocation proceeding shall be posted on the three (3) official bulletin boards of the Town of Colma and mailed to the owner of the property affected at the address shown on the last tax roll of San Mateo County at least ten (10) days before the matter is brought before the City Council. In lieu of revocation, the City Council may add to, delete or amend conditions of the Use Permit.

[History: formerly § 5.343; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.440 Non-Conforming Building and Uses.

(a) A non-conforming building may be maintained, except as otherwise provided in this section, and repairs and alterations may be made to such building provided that in a building or structure which is non-conforming as to use regulations, no structural alteration shall be made

nor shall a building be added to, or enlarged in any manner, unless such building, including such additions and enlargements, are made to conform to all regulations of the zone in which it is located. No non-conforming building shall be moved in whole or in part to any other location on the lot unless every portion of said building is made to conform to all the requirements of the zone in which it is located.

(b) A non-conforming building which is damaged or partly destroyed by fire, flood, wind, earthquake, or other calamity or Act of God or the public enemy, to the extent of more than fifty (50) per cent of its value at that time, may be restored provided the total cost of such restoration does not exceed fifty (50) per cent of the value of the building at the time of such damage. In the event such damage or destruction exceeds fifty (50) per cent of the value of such non-conforming building or structure, no repairs or reconstruction shall be made unless every portion of such building is made to conform to all regulations for new buildings in the zone in which it is located.

(c) Except as otherwise provided in this subsection the non-conforming use of a building, existing at the time this ordinance became effective, may be continued; the use of a non-conforming building may be changed to a use of the same or more restricted classification; however, if so changed, it shall not thereafter be changed to a use of a less restricted classification. A vacant non-conforming building may be occupied by a use for which the building was designed or intended if so occupied within a period of one (1) year after the effective date of this ordinance, and the use of a non-conforming building which becomes vacant after the effective date of this ordinance may also be occupied by a use for which the building was designed or intended if so occupied within a period of one (1) year after the building becomes vacant.

(d) A non-conforming use of a building conforming to the use regulations shall not be expanded or extended into any other portion of said building nor changed, except to a conforming use. If such a non-conforming use or portion thereof is discontinued or changed to a conforming use, any further use of such building or portion thereof shall be in conformity with the regulations of the zone in which said building is located.

(e) The non-conforming use of land (where no building is involved), existing at the time this ordinance became effective, may be continued; provided that no such non-conforming use of land shall in any way be expanded or extended either on the same or adjoining property, and further provided that, if such non-conforming use of land or any portion thereof is discontinued or changed, any future use of land shall be in conformity with the provisions of this ordinance.

[History: formerly § 5.344; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.450 Application for Variance.

(a) An application for a variance shall be made on the Town of Colma Project Application and shall contain such information as is necessary to complete the Project Application. In addition, the application shall contain sufficient information to enable the City Council to determine whether the standards for granting a variance are met.

(b) The application shall be reviewed by the City Planner for completeness in accordance with section 5.01.040 of this Code.

(c) Within ten (10) days after the City Planner has determined that the application is complete, he shall transmit the same to the City Council for his recommendations. This time limitation is merely directory, not mandatory.

(d) A public hearing shall be held by the City Council prior to taking any action to grant or deny any variance. The public hearing shall be conducted in accordance with the provisions of section 1.02.120 of this Code. Whenever possible, the public hearing required by this section shall be held at the same time as, and in conjunction with, the public hearing, if any, on the final EIR for the project for which the variance is requested.

(e) An application for a variance shall be accompanied by a fee, which shall be established from time to time by the City Council of the Town of Colma by resolution.

[History: formerly § 5.345, ORD. 234, 3/14/79; ORD. 443, 9/9/92; ORD. 524, 1/14/98; ORD. 638, 12/14/05]

5.03.460 Standards for Granting a Variance.

(a) Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

(b) Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

(c) In granting a variance, the City Council may impose such conditions as are deemed necessary and desirable to protect the public health, safety and welfare in accordance with the purposes and intent of the General Plan and this subchapter, provided that no variance may be conditioned upon:

(1) The dedication of land for any purpose not reasonably related to the use of the property for which the variance is requested; or

(2) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which the variance is requested.

[History: formerly § 5.346; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.470 Effective Date of Variance.

The decision to grant or delay a variance shall become effective upon expiration of ten (10) days following action of the City Council, unless a written request for reconsideration along with a filing fee, which shall be established from time to time by the City Council of the Town of Colma by resolution, shall have been filed with the City Clerk in accordance with section 1.02.130 of this Code within said ten (10) day period by any person affected by said decision.

[History: formerly § 5.347, ORD. 234, 3/14/79; ORD. 524, 1/14/98; ORD. 638, 12/14/05]

5.03.480 Application for Amendment.

(a) An application for an amendment described in section 5.03.490(a) of this Code shall be made on the Town of Colma Project Application and shall contain such information as is necessary to complete the Project Application. In addition, the application shall contain sufficient information to enable the City Council to determine whether the standards for granting an amendment are met.

(b) The application shall be reviewed by the City Planner for completeness in accordance with section 5.01.040 of this Code.

(c) Within ten (10) days after the City Planner has determined that the application is complete, he shall transmit the same to the City Council with his recommendations. This time limitation is merely directory, not mandatory.

(d) A public hearing shall be held by the City Council prior to taking any action to grant or deny any amendment. The public hearing shall be conducted in accordance with the provisions of section 1.02.120 of this Code. Whenever possible, the public hearing required by this section shall be held at the same time as, and in conjunction with, the public hearing, if any, on the final EIR for the project for which the amendment is requested.

(e) An application for an amendment shall be accompanied by a fee, which shall be established from time to time by the City Council of the Town of Colma by resolution.

[History: formerly § 5.348; ORD. 234, 3/14/79; ORD. 443, 9/9/92; ORD. 524, 1/14/98; ORD. 638, 12/14/05]

5.03.490 Standards for Adopting Amendments to Zoning Ordinance.

(a) This subchapter may be amended to change any property from one zone to another, or to impose any regulation authorized by state law not theretofore imposed, or to remove or modify any existing regulation theretofore imposed, if such amendment is justified by a change of conditions and is in the public interest.

(b) This subchapter may be amended for any purpose not described in subparagraph (a) above in accordance with state laws governing the adoption and amendment of ordinances in general.

[History: formerly § 5.349; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.500 Compliance.

All departments, officials, or public employees, vested with the duty or authority to issue licenses, permits, or certificates of occupancy where required by law, shall conform to the provisions of this ordinance. No such permit or license for buildings, uses, or purposes where the same would be in conflict with the provisions of this ordinance shall be issued. Any such permit or license, if issued in conflict with the provisions hereof, shall be null and void.

[History: formerly § 5.350; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.510 Interpretation, Purpose, Conflict.

(a) In interpreting and applying the provisions of this ordinance, they shall be held to the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easement, covenant or other agreement between parties. Where this ordinance imposes a greater restriction upon the use of buildings or land, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this ordinance shall control.

(b) Whenever there is any question regarding the interpretation of the provisions of this ordinance or their application to any specific case or situation, the City Council shall interpret the intent of this ordinance by written decision and such interpretation shall be followed in applying said provisions.

[History: formerly § 5.351; ORD. 234, 3/14/79; ORD. 638, 12/14/05]

5.03.520 Administrative Permits.

(a) Whenever the Colma Municipal Code specifically provides that a permit or other entitlement regarding use of land may be issued administratively, the City Planner may administratively grant a use permit or other entitlement to use property in accordance with the procedures set forth in this section.

(b) Whenever a Conditional Use Permit for an identifiable parcel of property specifically provides that a permit or other entitlement regarding use of any portion or unit of that property may be issued administratively, the City Planner may administratively grant a use permit or other entitlement to use property in accordance with the procedures set forth in this section.

(c) An application for an Administratively-granted Permit shall be made on the Town of Colma Project Application form and be submitted to the City Planner, along with an application fee which shall be established from time to time by the City Council of the Town of Colma by resolution. The application shall be reviewed by the City Planner for completeness. The City Planner shall notify the City Clerk's office and the applicant when the application is complete.

(d) Notice of the complete application shall be posted in accordance with law. The notice shall describe the application and give the date and time at which the matter will be decided by the City Planner.

(e) Prior to the issuance of an Administrative Permit, the City Planner must find that the proposed activity meets each of the criteria and standards required for issuance of the permit.

(f) In granting an Administrative Use Permit, the City Planner may also impose such conditions as are deemed necessary and desirable to protect the public health, safety and welfare in accordance with the purposes and intent of the General Plan and this subchapter.

(g) A decision of the City Planner to grant or deny an Administrative Use Permit may be appealed by any interested party to the City Council in accordance with the procedures set forth in section 1.02.140 of the Colma Municipal Code. On the appeal, the City Council shall hear the application *de novo* and shall make an independent judgment to grant or deny the application.

(h) Notwithstanding any of the foregoing provisions of this section 5.03.520, an application for an administrative permit shall be forwarded to the City Council for public hearing and determination in accordance with the Colma Municipal Code whenever:

(1) the City Planner determines to forward the application to the Council; or

(2) any council member gives written notice to the Planner prior to the date and time scheduled to hear the application or within ten days after the hearing, requesting that the application be considered by the City Council.

[History: formerly § 5.355, ORD. 234, 3/14/79; ORD. 563, 10/18/99; ORD. 638, 12/14/05, ORD. 647, 7/12/06]